IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5797 OF 2006

Sidheshwar Trading Company & Anr. ...Petitioners

Versus

The Kupwad Urban Co-op Bank Ltd & Anr. ...Respondents

Shri Mankapurkar i/by G.J.Shekhar & Co for the Petitioners.
Shri S.S.Patwardhan for the Respondent No.1.

CORAM : ABHAY S.OKA, J.
DATED : APRIL 12, 2007.

P.C.:

1. By this Writ Petition under Article 227 of the Constitution of India, the Petitioners have taken exception to order dated 12th July, 2006 passed by the Divisional Joint Registrar of Co-operative Societies. An application has been made by the first Respondent by invoking section 101 of the Maharashtra Co-operative Societies Act, 1960 for grant of recovery certificate against the Petitioners. In the proceedings for grant of recovery certificate, an application was made by the Petitioners before the Deputy Registrar of Co-operative Societies for deciding the issue of limitation as a preliminary issue. By order dated 05th September, 2005 the application made by the Petitioners for framing preliminary issue of jurisdiction has been rejected. While rejecting the said application, the Deputy Registrar observed that on 30th March, 2001 the Petitioners had deposited a sum of Rs.5,000/- in cash and therefore, it was not necessary to decide the issue

of limitation as a preliminary issue. A revision application was preferred by the Petitioners for challenging the said order which has been dismissed by the impugned order.

2. The submission of the learned counsel for the Petitioners is that the application made by the first Respondent was ex facie barred by limitation and therefore, the issue of limitation could have been tried as a preliminary issue and decided in favour of the Petitioners.

3. A perusal of the impunged order passed by the Divisional Joint Registrar shows that he has not decided issue finally. He has observed that the issue of limitation can be decided alongwith the other issues.

4. A decision on the issue of limitation involves a decision on mixed questions of law and facts. Therefore, the Deputy Registrar was justified in refusing to frame preliminary issue of jurisdiction. There is no error in the view taken by the revisional authority. However, it is made expressly clear that issue of limitation is kept open which will be decided while finally deciding the application under section 101 of the said Act made by the first Respondent and all contentions in that behalf are kept open. Subject to what is stated above, Writ Petition is rejected.

JUDGE